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SIDAMBARAM TOROSAMY v. LOK BEE YEONG

COURT OF APPEAL, PUTRAJAYA
HAMID SULTAN ABU BACKER JCA
BADARIAH SAHAMID JCA
MARY LIM JCA
B [CIVIL APPEAL NO: B-02(NCVC)(W)-764-04-2016]
2 JUNE 2017

LAND LAW: *Power of attorney – Validity of – Non-payment of loans – Deceased granted power of attorney to sell property and secure proceeds of sale as repayment*
C *of loans – Property subsequently sold by deceased – Proceeds from sale used to purchase another property – Whether deceased committed fraud in selling bungalow – Whether power of attorney granted revocable – Whether power of attorney could be impliedly revoked – Contracts Act 1950, ss. 155, 158 & 159 – Powers of Attorney Act 1949*

D

The appellant ('the plaintiff') commenced a claim at the High Court against his deceased brother's ('the deceased') estate which was represented by the deceased's widow, the respondent ('the defendant'). According to the plaintiff, (i) he had given financial assistance to the deceased on various occasions and this included paying for the deceased's medical and burial
E expenses; (ii) for the repayment of the loans, the deceased had given a power of attorney ('the POA') to the plaintiff to sell his bungalow house ('the bungalow') and to take the proceeds absolutely; (iii) the deceased sold the bungalow for RM1.45 million and instead of remitting the whole sum to the plaintiff, the deceased paid only RM549,995 to the plaintiff. The balance
F of the sale proceeds was used, *inter alia*, to purchase a terrace house. Anchoring his cause of action on breach of trust, fraud and repayment of money, the plaintiff claimed for (i) the balance proceeds of sale of the bungalow in the amount of RM900,005; (ii) medical and funeral expenses and other related expenses in the amount of RM141,936.30. The plaintiff
G further sought orders and declarations that (i) the deceased had assigned his interest in the bungalow to the plaintiff *via* the POA and the plaintiff was entitle absolutely to the said property; (ii) the defendant pay the plaintiff a sum of RM900,005 being the balance proceeds received by the deceased from the sale of the bungalow; (iii) upon the sale of the deceased's terrace
H house, the sum of RM900,005 be deducted and paid to the plaintiff together with the sum of RM141,936.30; and (iv) the plaintiff be authorised to receive and retain the sum of RM1,041,947.30 from the sale of the terrace house. The defendant denied knowledge of the events alleged by the plaintiff. The Judicial Commissioner ('the JC') dismissed the claim for the sum of RM900,005 and allowed the claim for burial expenses on the condition that
I the plaintiff produces the receipt. The JC held, *inter alia*, that (i) the POA was

revocable in nature and even though there was no written notice of its revocation, the deceased had impliedly revoked the POA; and (ii) there was no evidence adduced by the plaintiff on the loan extended to the deceased. Hence, the present appeal.

Held (allowing appeal in part)
Per Hamid Sultan Abu Backer JCA delivering the judgment of the court:

(1) It could not be disputed that the plaintiff had an interest in the sales proceeds of the sale of the bungalow. The POA fell within the jurisprudence and parameters of an irrevocable POA. Illustration (a) of s. 155 of the Contracts Act 1950 ('the CA') clearly supports the proposition that the POA was irrevocable. In addition, as the POA was never revoked during the lifetime of the deceased, the terms stated in the POA would stand valid. One of the terms would be the plaintiff's entitlement to the proceeds of the sale of the bungalow. Even if it was not an irrevocable POA, the deceased could not have acted in law or equity against the express terms contained in the POA itself. If he did, it might amount to breach of contract and fraudulent breach of trust. Sections 158 and 159 of the CA make it clear; if there is wrongful revocation, damages will entail. (paras 23, 24 & 26)

(2) The evaluation of facts and laws on the issue of the bungalow was misconceived, perverse and required appellate intervention. The defendant's defence of no knowledge was insufficient to displace the plaintiff's claim as the deceased had absolutely given the proceeds of the sale to the plaintiff. In law, the POA will corroborate the evidence of the plaintiff. There was also no challenge of defence as to the POA itself. (paras 30 & 32)

(3) It was not proper for the JC to make the order which said the burial expenses was to be allowed provided the plaintiff produces the receipt. Such an order would not bring finality to court proceedings. The law is clear that if the plaintiff does not prove his claim, it must be dismissed. However, there was evidence of total expenditure of RM13,261. Those documents were not challenged and the claim should have been allowed. (para 37)

(4) The order of the High Court dismissing the plaintiff's claim for RM900,005 was varied. The court declared that the deceased had assigned his interest in the bungalow to the plaintiff by way of a POA and the plaintiff was absolutely entitled to the said bungalow and/or all proceeds from the sale of the same. The defendant was ordered to pay RM900,005 to the plaintiff, being the balance proceeds received from the sale of the bungalow. Upon the sale of the terrace house, the sum of RM900,005 was ordered to be deducted and paid to the plaintiff. (para 38)

A ***Bahasa Malaysia*** *Headnotes*

Perayu ('plaintif') memulakan tindakan di Mahkamah Tinggi terhadap estet adik lelakinya yang telah meninggal dunia ('si mati') yang diwakili balu si mati iaitu responden ('defendan'). Menurut plaintif, (i) dia sering memberi bantuan kewangan kepada si mati dan ini termasuk membayar perbelanjaan
B perubatan dan pengebumian si mati; (ii) bagi membayar semula pinjaman-pinjaman ini, si mati telah memberi surat kuasa wakil ('SKW') kepada plaintif untuk menjual rumah banglonya ('banglo') dan mengambil hasil jualan tersebut secara mutlak; (iii) si mati menjual banglo tersebut bagi jumlah RM1.45 juta namun tidak memulangkan jumlah tersebut kepada
C plaintif tetapi, sebaliknya, hanya membayar RM549,995 kepada plaintif. Baki hasil jualan tersebut digunakan, antara lain, untuk membeli sebuah rumah teres. Berpegang pada kausa tindakan pecah amanah, penipuan dan pemulangan wang, plaintif menuntut (i) baki hasil jualan banglo berjumlah RM900,005; dan (ii) perbelanjaan perubatan dan pengebumian dan lain-lain
D perbelanjaan berkaitan yang berjumlah RM141,936.30. Plaintif seterusnya memohon perintah dan pengisytiharan bahawa (i) si mati menyerahhakan kepentingannya dalam banglo tersebut kepada plaintif melalui SKW dan plaintif berhak secara mutlak atas hartanah tersebut; (ii) si mati membayar RM900,005 kepada plaintif iaitu baki hasil jualan yang diterima oleh si mati
E susulan jualan banglo tersebut; (iii) selepas jualan rumah teres si mati, jumlah RM900,005 ditolak dan dibayar kepada plaintif bersama-sama dengan jumlah RM141,936.30; dan (iv) plaintif diiktiraf menerima dan memegang RM1,041,947.30 hasil jualan rumah teres. Defendan menafikan pengetahuan tentang peristiwa-peristiwa yang didakwa oleh plaintif. Pesuruhjaya
F Kehakiman ('PK') menolak tuntutan bagi jumlah RM900,005 dan membenarkan tuntutan perbelanjaan pengebumian dengan syarat plaintif mengemukakan resitnya. Pesuruhjaya Kehakiman memutuskan, antara lain, (i) SKW bersifat boleh dibatalkan dan walaupun tiada notis pembatalannya secara bertulis, si mati telah membatalkan SKW secara tersirat; dan (ii) tiada keterangan yang dikemukakan oleh plaintif tentang pinjaman yang diberi
G kepada si mati. Maka timbul rayuan ini.

Diputuskan (membenarkan sebahagian rayuan)
Oleh Hamid Sultan Abu Backer HMR menyampaikan penghakiman mahkamah:

H **(1)** Tidak dipertikaikan bahawa plaintif mempunyai kepentingan dalam hasil jualan banglo tersebut. Surat kuasa wakil terangkum dalam jurisprudens dan ruang lingkup SKW yang tidak boleh dibatalkan. Ilustrasi (a) bawah s. 155 Akta Kontrak 1950 ('AK') jelas menyokong hujahan bahawa SKW tidak boleh dibatalkan. Tambahan lagi, oleh
I kerana SKW tidak dibatalkan semasa hayat si mati, terma-terma yang terkandung dalam SKW kekal sah. Salah satu terma ini ialah hak plaintif menerima hasil jualan banglo. Jika pun SKW tidak boleh dibatalkan, si mati tidak boleh bertindak bawah undang-undang atau ekuiti

menentang terma nyata yang terkandung dalam SKW itu sendiri. Jika dia bertindak sedemikian, ini terjumlah sebagai pelanggaran kontrak dan penipuan pecah amanah. Seksyen 158 dan 159 AK jelas; jika berlaku pembatalan salah, ganti rugi pasti terlibat.

(2) Penilaian fakta dan undang-undang tentang isu banglo satu salah tanggapan, berlawanan dan mewajarkan campur tangan rayuan. Pembelaan defendan, iaitu tiada pengetahuan, tidak cukup untuk menyangkal tuntutan plaintif kerana si mati telah memberi hasil jualan secara mutlak kepada plaintif. Bawah undang-undang, SKW menyokong keterangan plaintif. Tiada juga cabaran terhadap pembelaan SKW itu sendiri.

(3) Tidak wajar buat PK memerintahkan bahawa perbelanjaan pengebumian hanya dibenarkan jika plaintif mengemukakan resit. Perintah demikian tidak akan memuktamadkan prosiding mahkamah. Undang-undang jelas menetapkan jika plaintif tidak membuktikan tuntutannya, tuntutan tersebut harus ditolak. Walau bagaimanapun, terdapat keterangan perbelanjaan berjumlah RM13,261. Dokumen-dokumen ini tidak dicabar dan tuntutan ini sepatutnya dibenarkan.

(4) Perintah Mahkamah Tinggi yang menolak tuntutan plaintif bagi RM900,005 diubah. Mahkamah mengisytiharkan si mati telah menyerahhakan kepentingannya dalam banglo kepada plaintif melalui SKW dan plaintif berhak secara mutlak terhadap banglo dan/atau semua hasil jualannya. Defendan diperintahkan membayar RM900,005 kepada plaintif iaitu baki jualan yang diterima hasil jualan banglo tersebut. Dengan jualan rumah teres, jumlah RM900,005 tersebut diperintahkan ditolak dan dibayar kepada plaintif.

Case(s) referred to:

Abu Bakar Pangis & Ors v. Tung Cheong Sawmill Sdn Bhd & Ors And Another Appeal [2015] 5 CLJ 753 CA ***(refd)***

APV Hill & Mills (M) Sdn Bhd v. AQ-Pacific Wide Sdn Bhd & Anor [2006] 1 CLJ 370 CA ***(refd)***

Benmax v. Austin Motor Co Ltd [1955] AC 370 ***(refd)***

China Airlines Ltd v. Maltran Air Corp Sdn Bhd & Another Appeal [1996] 3 CLJ 163 FC ***(refd)***

Clarke v. Edinburg Tramways Co [1919] SC 35 HL ***(refd)***

Eng Mee Yong & Ors v. Letchumanan [1979] 1 LNS 18 PC ***(refd)***

Kyros International Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri [2013] 3 CLJ 813 CA ***(refd)***

Pekan Nenas Industries Sdn Bhd v. Chang Ching Chuen & Ors [1998] 1 CLJ 793 FC ***(refd)***

Sidambaram Torosamy v. Lok Bee Yeong (As Administrator Of The Estate Of Soma Sundaram Doraiswamy, Deceased) [2016] 8 CLJ 559 HC ***(refd)***

Smart v. Sandars [1848] 5 CB 895 ***(refd)***

Watt (or Thomas) v. Thomas [1947] AC 484 ***(refd)***

A **Legislation referred to:**
Contracts Act 1950, ss. 155, 158, 159
Powers of Attorney Act 1949, ss. 3, 4 , 5, 6, 7

Other source(s) referred to:
Janab's Series to Law, Practice And Legal Remedies (2005), pp 272-275

B *For the appellants - George Proctor; M/s YS Woo & Proctor*
For the respondent - Jasvinder Singh & C Leo Camoens; M/s Mazwan Pathma & Co

[Editor's note: For the High Court judgment, please see Sidambaram Torosamy v. Lok Bee Yeong (As Administrator Of The Estate Of Soma Sundaram Doraiswamy, Deceased) [2016] 8 CLJ 559 (overruled in part).]

C

Reported by Najib Tamby

JUDGMENT

Hamid Sultan Abu Backer JCA:

D

[1] The appellant/plaintiff's appeal is against part of the decision of the learned Judicial Commissioner who disallowed a substantial claim of the plaintiff against the estate of his brother (deceased) who is represented by the defendant who is the deceased's wife. In the instant case, evidence had been adduced in court to show the relationship between the deceased and the wife had been estranged.

E

[2] The primary facts supported by evidence in our own words are as follows:

F (i) the plaintiff has given financial assistance to the deceased on various occasions, and even after death;

(ii) the deceased had given a power of attorney to the plaintiff to sell his bungalow house (bungalow) and take the proceeds absolutely;

(iii) the plaintiff had fully settled the deceased's outstanding loan in respect G of the bungalow;

(iv) the deceased had subsequently sold the bungalow and from the proceeds, he paid the plaintiff a sum of money and the balance was used to settle the deceased debts and to purchase a terrace house;

H (v) the plaintiff had paid for medical expenses, etc. for the deceased who died in India and also for transportation expenses to bring the deceased's body back to Malaysia;

(vi) the plaintiff had given evidence supported by documentary evidence to show that the deceased was indebted to the plaintiff and that resulted in I the execution of the power of attorney.

[3] The plaintiff's cause of action is anchored on breach of trust, fraud and repayment of money advanced until the deceased's burial, etc. The prayers in the statement of claim read as follows:

(1) An Order and Declaration that the said SOMA SUNDARAM A/L DORAISWAMY (Deceased) had assigned his interest in the said Property held under No. Pendaftaran 3208, Lot 152, Seksyen 6, Bandar Petaling Jaya, Daerah Kuala Lumpur, having a Postal Address No.11, Jalan 6/6, 46000 Petaling Jaya, Selangor to the Plaintiff vide a Power of Attorney dated 2-1-2004 and the Plaintiff was entitled absolutely under Clause 21 of the said Power of Attorney to the said Property and/or to all proceeds from the sale of the said Property.

(2) An Order and Declaration that the Defendant pays the Plaintiff the sum of RM900,005.00 being the Balance Proceeds received by the said SOMA SUNDARAM A/L DORAISWAMY (Deceased) from the sale of the said property.

(3) Further an Order and Declaration that upon the sale of the said Property Held under H.S.(M) 8507 PT 1458, Mukim Damansara. Bandar Sunway, Daerah Petaling, Negeri Selangor having a postal address at No. 15, Jalan PJS 914, Bandar Sunway, 46150, Petaling Jaya, the sum of RM900,005.00 under Para 57 (2) above be deducted and paid to the Plaintiff together with the further sum RM141,936.30 stated at Para 54 above.

(4) Further an Order and Declaration that the Plaintiff be authorised to execute the Sale & Purchase Agreement and Memorandum of Transfer and all other requisite documents for the sale of the property held under H.S.(M) 8507 PT 1458, Mukim Damansara, Bandar Sunway, Daerah Petaling, Negeri Selangor having a postal address at No. 15, Jalan PJS 914, Bandar Sunway, 46150, Petaling Jaya to the Intended Purchaser Teng Chuan Heng and/or any-other Intended Purchaser at a Purchase Price of RM790,000.00 or above (if possible).

(5) An Order and Declaration that the Plaintiff be authorised to receive and retain the sum of RM1,041,947.30 from the sale of the land held under H.S.(M) 8507 PT 1458, Mukim Damansara, Bandar Sunway, Daerah Petaling, Negeri Selangor having a postal address at No.15, Jalan PJS 914, Bandar Sunway, 46150, Petaling Jaya from the Intended Purchaser Teng Chuan Heng and/or any other Intended Purchaser in settlement of the monies owing by the deceased to the Plaintiff.

(6) Costs be paid to the Plaintiff by the Defendant.

[4] The learned Judicial Commissioner only granted a small part of the claim and dismissed the claim related to breach of trust and/or fraud. The final draft order of the court as per the appeal record is as follows:

DERAF PERINTAH

TUNTUTAN PLAINTIF setelah dipanggil untuk keputusan pada hari ini dalam kehadiran En. George C. Proctor Peguamcara bagi Plaintif dan En. Jasvinder Singh Peguamcara bagi Defendan DAN SETELAH MEMBACA Hujahan Bertulis Plaintif, Hujahan Bertulis Defendan, Balasan Hujahan Bertulis Plaintif dan Balasan Hujahan Bertulis Defendan DAN SETELAH MENDENGAR Peguamcara-Peguamcara tersebut DAN MAKA ADALAH DIPERINTAHKAN BAHAWA

1. Tuntutan Plaintif sebanyak RM900,005.00 yang merupakan wang terhutang bagi penjualan Rumah Bungalow ditolak;
2. Tuntutan Plaintif sebanyak RM14,950.43 yang merupakan wang yang telah dibayar kepada Lembaga Hasil Dalam Negeri Shah Alam oleh Plaintif bagi pihak si mati dibenarkan;
3. Tuntutan Plaintif sebanyak RM27,875.52 yang merupakan perbelanjaan pembelian tiket penerbangan pergi-balik ke India dan perbelanjaan penghantaran balik mayat dari India ke Malaysia ditolak;
4. Tuntutan Plaintif bagi perbelanjaan pengebumian yang dibayar oleh Plaintif bagi si mati dibenarkan dengan syarat Plaintif mempunyai resit-resit di atas namanya; dan
5. Kos akan ditaksirkan dan akan dibayar oleh Defendan kepada Plaintif.

Jurisprudence Relating To Perverse Decision

[5] The learned Judicial Commissioner had written a meticulous judgment setting out the facts and the law running to 42 pages. However, we find one thread which flowed throughout the judgment that is the appreciation of facts and law was perverse to the plaintiff, taking into consideration that the deceased had voluntarily executed a power of attorney and in that power of attorney the deceased had given the proceeds of the sale of the bungalow to the plaintiff. We also find the related legal principles were rightly identified by the learned Judicial Commissioner save that the application of the principles to the facts was misconceived. That is to say, *prima facie* in law and equity, the deceased had divested his interest in the property to the plaintiff. The deceased's role after the execution of the power of attorney at the most will be that of a constructive trustee. Powers of attorney of this nature where the owner of the property has given away his interest, whether as a consideration or compromise arrangement or assignment of interest, etc. is often referred to as irrevocable power of attorney. The word irrevocable need not be stated so. It all depends on the surrounding circumstances which lead to the execution of the power of attorney. For example, it is not unusual in banking documents to find power of attorney given by a borrower to the bank giving full liberty to the bank to sell the charged property and utilise the proceeds of the sale.

[6] It is well-established that the appellate courts will not readily interfere with finding of facts and assessment of witnesses' evidence. There are a number of exceptions to this well known principle. (See (i) *Pekan Nenas Industries Sdn Bhd v. Chang Ching Chuen & Ors* [1998] 1 CLJ 793; [1998] 1 MLJ 465; (ii) *APV Hill & Mills (M) Sdn Bhd v. AQ-Pacific Wide Sdn Bhd & Anor* [2006] 1 CLJ 370; [2006] 3 MLJ 235 (CA); (iii) *Eng Mee Yong v. Letchumanan* [1979] 1 LNS 18; [1979] 2 MLJ 212; (iv) *Benmax v. Austin Motor Co Ltd* [1955] AC 370; (v) *China Airlines Ltd v. Maltran Air Corp Sdn Bhd & Another Appeal* [1996] 3 CLJ 163; [1996] 2 MLJ 517; (vi) *Abu Bakar Pangis & Ors v. Tung Cheong Sawmill Sdn Bhd & Ors And Another Appeal* [2015] 5 CLJ 753; [2014] 5 MLJ 384 (CA)].

[7] It must be emphasised here that the appellate courts do not welcome perverse decisions of the trial courts. The reason being that such decisions undermine the integrity of the decision-making process itself. The test to decide perversity is one materially related to common sense and miscarriage of justice. That is to say, the appellate court has to take into consideration the totality of the evidence, the law, pleading rules, etc.; related to a particular issue dealt with by the trial judge and decide whether any reasonable tribunal appraised of the facts and law would have come to the same conclusion. A finding of the trial court will always remain perverse, if it is perverse to the totality of the evidence and/or law and/or rules of procedure and/or evidence, etc.; sufficient to cause miscarriage of justice. If one factor or combination of factors had caused miscarriage of justice, the appellate court is obliged to intervene. However, on the totality of the evidence and/or the law, the plaintiff's suit needs to be wholly or partly allowed or dismissed then the trial court's decision though perverse may not require appellate intervention as there may not be a case to say there was indeed miscarriage of justice.

[8] The appellate court's function is to arrest miscarriage of justice based on sufficient grounds and in the process it is not necessary to go through each and every issue of fact and principle of law the trial court has erred or got it correct. Trying to go through in a fault finding mission of the trial court in all aspects will be sheer waste of judicial time of the appellate court, notwithstanding a grocery list of complaints are raised in the memorandum of appeal. In contrast, in arbitration, the arbitral tribunal is paid to answer all the questions posed by the parties. That is not the role of the trial courts or appellate courts. The courts' role is to deliver justice according to rule of law in line with the judges' oath of office to preserve, protect and defend the Federal Constitution and based on its own assessment of facts and law the parties have placed before the court.

Preliminaries

[9] On the date of hearing of the appeal, we invited parties to submit on the meaning and scope of the power of attorney as well as the meaning of irrevocable power of attorney.

[10] The judgment of the learned Judicial Commissioner has been reported and cited as *Sidambaram Torosamy v. Lok Bee Yeong (As Administrator Of The Estate Of Soma Sundaram Doraiswamy, Deceased)* [2016] 8 CLJ 559. To save court's judicial time, we do not think it is necessary to go into any detail in respect of the facts and findings save to say this judgment must be read with that judgment to appreciate our grounds in the proper perspective.

[11] The claim by the plaintiff can be split into two parts to deal with the issues effectively. They are as follows:

(a) evidence of money advanced by the plaintiff to the deceased which resulted in the power of attorney;

(b) money advanced by the plaintiff after the execution of the power of attorney until the burial.

Brief Facts

[12] The brief facts of the case and the conclusion of the Judicial Commissioner which has been placed before us in a rudimentary manner read as follows:

1. The plaintiff, Sidambaram is the elder brother of the deceased, Soma Sundaram (Soma).
2. The defendant, Lok Bee Yeong, is the widow of Soma and also the administrator of his estate.
3. Sidambaram filed a writ action against Soma's estate alleging breach of trust and fraud for selling a bungalow belonging to Soma because Soma had prepared a Power of Attorney (P/A) giving Sidambaram the power to sell the bungalow.
4. Sidambaram alleged that he had on many occasions given Soma numerous loans. One of the loans of RM120,000.00 was given for the purpose of redeeming the bungalow from the bank in which Soma promised to pay within 6 months.
5. Soma failed to repay Sidambaram. Soma then suggested that he makes an outright transfer of the bungalow to Sidambaram. However, this plan did not materialise.
6. Upon suggestion by his solicitor, Soma proposed the grant of Power of Attorney to Sidambaram. 2 important terms to be inserted in the P/A will vest in Sidambaram the absolute power to sell the bungalow and that the whole of the proceeds of the sale was to be given to Sidambaram.
7. Sometime in 2007, while Sidambaram was in Tanzania, Soma informed him that the lease of the bungalow needs to be extended. Sidambaram requested Soma to make the application and paid all costs incidental to the application. As the title was needed for the renewal process, Sidambaram had asked Soma to collect it from his wife in Malaysia.

8. Upon returning to Malaysia, Sidambaram found that the title was still at the Land Office pending approval of the extension application. Sidambaram then left to Canada due to work.

9. When Sidambaram returned to Malaysia, Soma admitted that he had sold the bungalow for RM1.45 million and credited only RM549,995 into Sidambaram's account.

10. The balance of the proceeds of sale were used to pay off his creditors and purchased a terrace house in Bandar Sunway.

11. Sidambaram claimed for:

    (a) RM900,005.00 - the balance proceeds of sale of the bungalow. Sidambaram claimed that by virtue of clauses 9 & 21 in the Power of Attorney, Soma held the property on trust for him and he is entitled to the whole price.

    (b) RM141,936.30 - Sidambaram claimed medical expenses, funeral expenses and other related expenses spent by Sidambaram for Soma, (from this sum, the defendant had conceded Sidambaram's claim of RM14,950.43).

12. Sidambaram claimed from the proceeds of sale of the terrace house. It is the allegation of Sidambaram that prior to his death, Soma informed him that he would assign the terrace house as settlement of the RM900,005.00.

13. It is the contention of Sidambaram that:

    (a) Clause 9 of the PA- the deceased gave Sidambaran the right to sell the bungalow to any person;

    (b) Clause 21 stated that all proceeds from the sale of the bungalow shall go to Sidambaram;

    (c) The Power of Attorney had created an implied trust in favour of Sidambaram;

    (d) Section 5 of the Power of Attorney Act 1959 protects not only 3rd parties who deal with the Attorney but also the donee's interest in the property.

    (e) Section 5 also requires an express revocation or renunciation in writing.

14. The defendant contended that:

    (a) There was no trust relationship which existed but a donor-donee relationship under the P/A.

    (b) There was insufficient evidence to reach a conclusion that a trust existed.

[13] The findings of the High Court are summarised as follows:

(a) There was no breach of trust and fraud committed by Soma in selling the bungalow without informing Sidambaram.

(b) The power of attorney is revocable in nature.

(c) Apart from his oral claim, there was no evidence adduced by Sidambaram on the issues of loan extended to the deceased.

(d) Though there was no written notice of the revocation of the power of attorney, Soma by his actions had impliedly revoked the power of attorney.

(e) Sidambaram's documentary evidence contradicted his oral evidence (IOU with Logama).

[14] After a full trial, the judge made the following orders:

(a) Sidambaram's claim for the sum of RM900,005 was dismissed;

(b) The sum of RM14,950.443 paid to LHDN on behalf of Soma was allowed;

(c) The sum of RM27,875.52 as air tickets to India and expenses of bringing back Soma's body back to Malaysia was dismissed;

(d) The funeral expenses paid for by Sidambaram was allowed on condition he produces receipt.

(e) Costs to be borne by parties.

[15] Dissatisfied, Sidambaram appealed to the Court of Appeal.

[16] The memorandum of appeal reads as follows:

1. The Learned Judge erred in law and fact in dismissing the Appellant's/Plaintiffs claim for the sum of RM900,005.00 owing to him by the Deceased Soma Sundaram A/L Doraiswamy and further holding that there was no breach of trust or fraud by the said Deceased.

2. The Learned Judge erred in law and fact in failing to hold that the Deceased Soma Sundaram a/l Doraiswamy had held a Bungalow at No. 11, Jalan 6/6, 46000 Petaling Jaya, Selangor (Pendaftaran 3208, Lot 152, Seksyen 6, Bandar Petaling Jaya, Daerah Kuala Lumpur) in Trust for the Appellant/Plaintiff pursuant to Clause 9 & 21 of the Power of Attorney dated 2-1-2004.

3. The Learned Judge erred in law and fact in failing to hold that by virtue of Clause 9 & 21 of the said Power of Attorney dated 2-1-2004, and the fact that the Title Deed of the said Bungalow had been given by the Deceased to the Appellant/Plaintiff after the execution of the said Power of Attorney was clear evidence that the Bungalow had been assigned to the Appellant/Plaintiff and the Deceased was holding the said Bungalow in Trust for the Appellant/Plaintiff. In fact from 2-1-2004 the Appellant had paid all Quit Rent and Assessment for the said Bungalow.

4. The Learned Judge failed to hold that by virtue of the Appellant/ Plaintiff applying to extend the Lease of the said Bungalow for a further 99 years and paying the sum of RM195,776.32 to the Land Office for the said extension, about three (3) years after the Power of Attorney was executed, was clear evidence that the Bungalow had been assigned to the Appellant/Plaintiff by the Deceased.

5. Further, the Learned Judge erred in law and fact in failing to hold that the Deceased had agreed to sell his double-storey terrace house at No. 15, Jalan PJS 914, Bandar Sunway, 46150, Petaling Jaya (H.S.(M) 8507 PT 1458, Mukim Damansara, Bandar Sunway, Daerah Petaling, Negeri Selangor) and allow the Appellant/Plaintiff to receive the full sale proceeds and contra same against the sum of RM900,005 owing to the Appellant/Plaintiff by the Deceased.

6. The Learned Judge erred in law and fact in refusing to accept the evidence of the Appellant/Plaintiff that the Deceased had held the said Bungalow in Trust for the Appellant and had agreed to allow the Appellant/Plaintiff to receive the full monies from the sale of the said Terrace House, especially when the Respondent/ Defendant Lok Bee Yeong had admitted that she had no personal knowledge of the dealings between the Appellant/Plaintiff especially as the Deceased and the Respondent had serious marital problems.

7. The Learned Judge failed to hold that since the Title Deed of the Terrace House and all sale documents for the said house had been given to the Appellant/Plaintiff by the Deceased and not to the Defendant, was clear evidence that the Deceased had intended that the Appellant/Plaintiff be entitled absolutely to the Sale Proceeds of the said Terrace House.

8. The Learned Judge erred in law and fact in failing to hold that the Deceased had fraudulently and in breach of trust, sold the said Bungalow without the consent and knowledge of the Appellant/ Plaintiff.

9. The Learned Judge erred in law and fact in refusing to allow the Appellant/Plaintiff's claims at Para 54 (Item 6, 7, 8, 9, 10, 11, 12 & 13) of the Statement of Claim especially when these claims by the Appellant/Plaintiff were never challenged by the Respondent/ Defendant in Cross-Examination and the documents marked under Bahagian B of the Common Bundle of Documents.

10. The Learned Judge erred in law and fact when she stated that the said Power of Attorney dated 2-1-2004 had been impliedly revoked when there was no evidence that the Deceased had revoked same, as required by Section 5 of the Power of Attorney Act 1949 and Section 155 of the Contracts Act 1950.

11. In fact, there was clear evidence that the Deceased had at the request of the Appellant/Plaintiff, taken the Title Deed from the Appellant/ Plaintiff's family to renew the Lease for a further 99 years and then without the Appellant/Plaintiff's knowledge fraudulently and in breach of trust sold the property for RM1.45 Million.

12. The Learned Judge erred in law and fact in holding that an adverse inference should be drawn against the Appellant for failing to call his son as a Witness, to prove that the son had paid an additional sum of RM15,776.32 to renew the lease of the bungalow. The documents of payment by the Appellant's son were in Bundle B of the Common Bundle and there was no need to call the son especially when there was no dispute on the said payments to the Land Office or cross-examination by the Respondent/Defendant's solicitors on the said additional payments.

13. The learned Judge erred in law and fact in holding that there was insufficient consideration given by the Appellant to the deceased for the said Power of Attorney dated 2-1-2004 when there was clear evidence that the Appellant had paid the sum of RM119,985.00 on behalf of the Deceased to redeem the property from being sold by Public Auction by Standard Chartered Bank.

14. The Learned Judge failed to address her mind as to why the Appellant would renew the Lease for a further 99 years and pay the sum of RM195,776.32, unless the Bungalow had been assigned to him.

15. The Learned Judge refused to accept and disbelieved the Appellant's evidence that he had given various loans to the Deceased prior to the execution of the Power of Attorney just because the Appellant due to lapse of time could not find the documents proving payment.

16. The Learned Judge failed to note that there was clear evidence before the Court that the Appellant was very close to the Deceased and had in fact paid all his medical expenses, funeral expenses and income tax arrears including a further loan of RM50,000.00 given to the Deceased after the execution of the Power of Attorney.

Jurisprudence Relating To Power of Attorney

[17] The law on power of attorney in Malaysia is not only subject to common law principles but also to Contracts Act 1950 (CA 1950) as well as Powers of Attorney Act 1949 (PA 1949), etc. The definition of power of attorney and/or irrevocable power of attorney cannot be read in isolation.

[18] The parameters of what is termed as general power of attorney as opposed to irrevocable power of attorney is, *inter alia*, set out in *Halsbury's Laws of England* (4th edn, Reissue) as follows:

> A power of attorney is a formal instrument by which one person, the donor of the power, confers on another, the donee, power to act on behalf of the donor in the performance of a specific act or classes of act or generally. By such a creation, the donor as principal shall be liable to a third party for the acts of the donee, his agent, if the donee has acted within the bounds of his authority or such acts of the donee being subsequently rectifies by the donor. The law applicable under these circumstances between the donor and the donee is therefore that of principal and agent.

[19] A power of attorney coupled with interest to the donee will normally be referred to as irrevocable power of attorney to at least give effect to the intention of the parties which may be expressed or implied within the four corners of the terms of the power of attorney itself. Learned authors, Berna Collier and Shannon Lindsay on power of attorney in Australia and New Zealand on irrevocable power of attorney had this to say:

> The principle that an authority coupled with an interest is irrevocable except with the donee's consent has been recognised for centuries. A good definition of an irrevocable power coupled with an interest may be found in the case of *Clerk v. Laurie* [1857] 2 H&N199; 157 ER 83:
>
> > What is meant by an authority coupled with an interest being irrevocable is this - that where an agreement is entered into on a sufficient consideration, whereby an authority is given for the purpose of securing some benefit to the donee of the authority, such an authority is irrevocable.

[20] Under our law, to create a valid power of attorney it must be executed as per s. 3 and also deposited in the High Court as per s. 4 of PA 1949. (In this case, it was done so and in consequence, we will not set out the section).

[21] Once a valid power of attorney is given, it remains in full force until it is lawfully revoked. That is to say, the common law principles of revocation by conduct by the donor will not be applicable. Section 5 of PA 1949 sets out the procedure for revocation and the said section reads as follows:

> 5. Every instrument purporting to create a power of attorney of which a true copy or an office copy has been deposited in the office of the Registrar or a Senior Assistant Registrar in accordance with this Act or any law repealed by this Act whether before or after the commencement of this Act, shall, so far as the said instrument is valid and so far as may be compatible with the terms of the instrument, continue in force until notice in writing of the revocation thereof by the donor, or of the renunciation thereof by the donee, has been deposited in every office in which the office copy or true copy thereof has been so deposited, or either the donor or the donee has died or the donee has become of unsound mind, or the donor has been adjudged to be of unsound mind or a receiving order has been made against him in bankruptcy.

[In the instant case, there was no revocation as per s. 5 of PA 1949].

[22] Sections 6 and 7 of PA 1949 deal with limited instances of an irrevocable power of attorney. That is to say, notwithstanding the ability of the donor to revoke a power of attorney, the power of attorney under the PA 1949 may not be revocable at all, relating to purchaser of the property.

[23] Sections 6 and 7 of PA 1949 do not displace the common law position that an authority coupled with an interest is irrevocable except with the donee's consent. In the instant case, at least it cannot be disputed that the plaintiff has an interest in the sales proceeds of the sale of the bungalow. In consequence, the power of attorney in our view will fall within the jurisprudence and parameters of an irrevocable power of attorney. In addition, as the power was never revoked during the lifetime of the deceased, the terms stated in the power of attorney will stand valid. One of the terms will be the plaintiff's entitlement to the proceeds of the sale of the bungalow. In *Smart v. Sandars* [1848] 5 CB 895, Wilde CJ made the following observation:

> Where an agreement is entered into on a sufficient consideration whereby an authority is given for the purpose of securing some benefit to the donee of the authority such an authority is irrevocable.

[24] Even on the assumption, it is not an irrevocable power of attorney, the deceased could not have acted in law or equity against the express terms contained in the power of attorney itself. If he does, it may amount to breach of contract, fraudulent breach of trust, etc. It will depend on the pleadings as well as the evidence adduced in court.

[25] The law on agency which to some extent has nexus to the jurisprudence relating to power of attorney statutorily protects a donee who has an interest in the subject matter related to the power of attorney. Section 155 of the CA 1950 which specifically relates to agency principles states as follows:

> 155. Where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.
>
> ILLUSTRATIONS
>
> (a) A gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A. A cannot revoke this authority, nor can it be terminated by his unsoundness of mind or death.
>
> (b) A consigns 1,000 bales of cotton to B, who has made advances to him on such cotton, and desires B to sell the cotton, and to repay himself out of the price the amount of his own advances. A cannot revoke this authority nor is it terminated by his unsoundness of mind or death.

[26] Illustration (a) above clearly supports the proposition that the power of attorney is irrevocable. Sections 158 and 159 makes it clear if there is wrongful revocation damages will entail. (See *Janab's Series to Law, Practice And Legal Remedies* (2005) pp. 272 to 275].

Section 158 reads as follows:

> 158. Where there is an express or implied contract that the agency should be continued for any period of time, the principal must make compensation to the agent, or the agent to the principal, as the case may be, for any previous revocation or renunciation of the agency without sufficient cause.

Section 159 reads as follows:

> 159. Reasonable notice must be given of such revocation or renunciation; otherwise the damage thereby resulting to the principal or the agent, as the case may be, must be made good to the one by the other.

[27] In essence, if it is a revocable power of attorney, the law to some extent recognised the fact the donor is obliged to pay compensation. However, if it is irrevocable, then any conduct of the donor to the detriment of the donee will entail the donee to seek appropriate relief from the court not just limited to compensation alone. That is to say, whether revocable or irrevocable, a wrongful act of the donor will lead to the donee having relief through the court.

Pleadings

[28] In the instant case, the plaintiff had pleaded from para. 3 to at least para. 18, in essence to say that he has constantly advanced money to the deceased which resulted in the execution of a power of attorney. Paragraphs 14 to 16 of the statement of claim anchor the plaintiff's claim on the 'bungalow' issue. The said paragraphs read as follows:

> 14. Sometime in December 2003, the Deceased informed the Plaintiff that his Pub was not doing well. The Deceased was worried that he could not repay the monies owing by the Deceased to the Plaintiff and offered to assign the said Bungalow to the Plaintiff in consideration of the monies lent. The Plaintiff agreed to the deceased's Assignment of the said Property to him.
>
> 15. On 2-1-2004, the Deceased as agreed executed a Power of Attorney in favour of the Plaintiff in regard the said Bungalow. By Clause 9 of the said Power of Attorney the Deceased authorised the Plaintiff to sell the said Bungalow to any person and execute all transfers or Land Registry Documents in regard the said Property.
>
> 16. By Clause 21 of the said Power of Attorney dated 2-1-2004, the Deceased agreed that all proceeds from the sale of the said Bungalow shall go to the Plaintiff absolutely.

[29] The statement of defence denies paras. 14 to 16 and puts the plaintiff to strict proof. The said defence read as follows:

> Defendan tidak mempunyai sebarang pengetahuan mengenai perenggan-perenggan 14 hingga 17 Pernyataan Tuntutan dan meletakkan beban bukti kukuh atas Plaintif untuk membuktikannya. Defendan juga menafikan

A bahawa terdapat sebarang perjanjian untuk menyerahakkan hartanah bungalow tersebut kepada Plaintif oleh si mati dan meletakkan beban bukti kukuh atas Plaintif untuk membuktikannya.

[30] This defence on the 'bungalow' issue as pleaded is not sufficient to displace the plaintiff's claim as the deceased had absolutely given the B proceeds of sale to the plaintiff. In addition, in law, the power of attorney will corroborate the evidence of the plaintiff. Very importantly, there was no challenge in the statement of defence as to the power of attorney itself. This is captured in paras. 10 and 11 of the judgment which read as follows:

C 10. The defendant admits having no knowledge of the power of attorney but she attacks the veracity of the plaintiff's claim. She contends that if the plaintiff's allegations were true, the plaintiff ought to have instituted the action during the deceased's life time when the deceased was able to contest the claim instead of timing it to after his demise.

D 11. On the other end of the spectrum, the plaintiff argues that the defendant is in no position to challenge his claim on two grounds. Firstly, the challenge to the power of attorney was not pleaded in her statement of defence and secondly, she does not have personal knowledge of both the power of attorney and the trust. The power of attorney was executed before her marriage and she was not present when the deceased voiced his intention to transfer the terrace house to the plaintiff.

E

[31] Any reasonable tribunal appraised with the pleadings, evidence and the law will come to the conclusion that the plaintiff did advance money to the deceased which culminated in the power of attorney and the power of attorney is irrevocable.

F **[32]** In the instant case, only the plaintiff and the defendant (who had no knowledge of the events) gave evidence. The law only requires the plaintiff to establish the case on a balance of probabilities. We do not wish to go into detail in respect of the learned Judicial Commissioner's evaluation of facts and laws on the 'bungalow' issue, save to say it is misconceived, perverse and in law requires appellate intervention.

G

Trust And Fraud Issue

[33] Law and issues relating to trust and fraud are complicated in nature. Breach of contract may lead to breach of trust and breach of trust may lead to fraud, etc. Trust *per se* can be express, implied or constructive, etc. H Ultimately, the relief will relate to specific performance or damages or aggravated damages, loss of profit, etc. On the facts of this case, the uncontradicted evidence is that the title to the 'bungalow' was given to the plaintiff by the deceased and subsequently the deceased got back the title to renew the lease and thereafter proceeded to sell the bungalow and paid part I of the proceeds to the plaintiff only.

[34] Learned counsel for the plaintiff had submitted on the trust and fraud issues at length. It will save much judicial time by reproducing part of the submission *per se*. The submission, *inter alia*, read as follows:

> 5. During the Hearing on 22-3-2017, this Honourable Court rightly pointed out to the Respondent's Counsel that the deceased during his life time had divested all his interest in the said Bungalow as evidenced by the Power of Attorney dated 2-1-2004 and in particular Clause 9 & 21 therein. Further it was pointed out by this Honourable Court that the deceased had given the Title Deed for the Bungalow to the Perayu/ Plaintiff. We would add that from the date of the PA on 2-1-2004, the Perayu has been paying the Quit Rent & Assessment for the Bungalow including arrears for more than 10 years. (See page 315-318 of Rekod Rayuan Jilid 4).
>
> 6. However, 3 - 4 years after the PA was executed, the Perayu noticed that the Lease on the Bungalow was due to expire in about 19 years on 12-9-2026 (see page 115 of Rekod Rayuan Jilid 3 (RR3)).
>
> 7. Due to some incentives (discount/instalments) given by the Land Office for renewal of Leasehold properties, the Perayu requested the deceased to renew the lease for another 99 years. As the Bungalow was still in the name of the deceased, the Perayu had to request the deceased to apply for the renewal of the Lease.
>
> 8. This was where the problem started as the Perayu who was overseas in Tanzania with the UN had to request his family to hand the Title Deed to the deceased. The Land Office then approved the renewal of the Lease for 99 years and a sum of RM195,475. 32 was paid by the Perayu through his son (see Official Receipt of Pejabat Tanah dated 18-10-2007 at page 141 of RR3).
>
> 9. Obviously after renewing the Lease for another 99 years, the value of the Bungalow would have increased substantially. The submission by the Respondent's Counsel that the Perayu had only lent about RM500,000 to the deceased and his claim for further RM900,005 was an unjust enrichment. This argument we respectfully submit is untenable as the property was sold (unlawfully) on 27-2-2009 for RM1.45 Million simply because the Perayu had paid and renewed the Lease for a further 99 years.
>
> 10. We rely on the case of *Koh Yat Chong & Anor v. Koh Chin Lean Plantation Sdn. Bhd. & Ors* [2015] MLJU 379 (See pp. 1-7 of the perayu's supplementary bundle of authorities) where the facts were as follows:
>
> - The Plaintiffs sued their father (2nd Defendant) claiming that he held 1 Million shares in the 1st Defendant Company in trust for them and in that in breach of trust, he had transferred the shares to the 3rd & 4th Defendants.
> - The 2nd Defendant denied the existence of any Trust and averred that the Transfer of the shares to the 3rd & 4th Defendant was valid.

- The main question at the Trial was whether the 2nd Defendant had declared himself a Trustee of the shares for the Plaintiff and also his intention when signing the transfer forms of the shares in favour of the Plaintiffs.

- The issue at the Trial was whether that Constructive Trust came into existence in favour of the Plaintiffs when the 2nd Defendant signed the Shares Transfer Forms.

- Reference was made in this case to the two (2) cases we cited earlier namely the Court of Appeal case of *ESPL (M) Sdn. Bhd. v Radio & General Engineering Sdn. Bhd.* (2005) 2 MLJ 422 & the Federal Court case of *Wan Naimah v. Wan Mohamad Nawawai* (1974) 1 MLJ 41

- and where the court held:

  i. A trust can be established without the word "trust" being used and the crucial question is whether a sufficient intention to create a trust has been demonstrated. (See Para 27 at page 4 of the Perayu's Supplementary Bundle of Authorities)

  ii. A constructive trust came into existence upon the execution of the transfer form either by itself or coupled with delivery of the transfer form by the 2nd Defendant to the Plaintiffs to apply for and obtain registration.

  iii. The 2nd Defendant being the legal owner of the shares, until registration in the Plaintiff's name, held the legal interest in the shares as constructive trustee for the Plaintiffs.

11. We submit that the deceased was fraudulent when he transfers the Bungalow to a 3rd Party *via* a Sale & Purchase Agreement dated 27-2-2009 for RM 1.45 Million. The Deceased was a Constructive Trustee under the said PA and committed a clear breach of trust when he sold the bungalow without the knowledge and consent of the Perayu.

[35] In addition, the plaintiff submits:

8. This is a clear case of *ceste qui trust*. The Deceased was a bare trustee. The Deceased after confessing to the Perayu that he had defrauded him promised to pay the balance sum of RM900,005.00 owing to the Perayu when he sold the terrace house that the Deceased had purchased in Bandar Sunway.

9. It is interesting to note that the Bandar Sunway terrace house belonged to the Respondent's (Lok Bee Yeong's) elder sister and was purchased for RM300,000.00.

10. If the Respondent contends that this property was meant for her, why did the Deceased not register the property in her name?

11. Why did the Deceased hand over all original documents pertaining to the terrace house to the Perayu and not to the Respondent?

12. We submit that the Deceased because of the breach of trust/fraud committed by him agreed that from the sale of the double-storey terrace house, all proceeds could go to the Perayu in part settlement of the sum of RM900,005.00 owing by the Deceased.

13. In his evidence, the Perayu stated that the Deceased had instructed the Perayu to transfer the terrace house to the Perayu and also to execute another PA. For some reason and perhaps due to the medical condition of the Deceased and the stroke suffered by the Deceased, this was not done. The Deceased due to the stroke could not sign any documents and his thumbprint had to be used.

14. In good faith the Perayu made arrangements to send the Deceased to India for the 2nd time for further treatment for his stroke. Alas the Deceased after being left in India for treatment suddenly passed away.

15. This Honourable Court will surely note that the Perayu was extremely fond of the Deceased, and despite the Deceased's unlawful actions, the Perayu still loved him and continued to provide money for his medical treatment in Malaysia and India. Even the funeral expenses to bring the body back and the burial in Tapah were paid for by the Perayu.

[36] We find that the plaintiff's submission has merits limited to the instant case only to grant prayers (1), (2) and part of prayer (3) (excluding the claim for the sum of RM141,936.30) of the statement of claim.

[37] We have read the appeal record and the submissions of the parties in detail. After giving much consideration to the submission of learned counsel for the respondent, we take the view that the appeal should be partly allowed. Our reasons *inter alia* are as follows:

(i) We have given reasons why prayers (1) and (2) and part of prayer (3) should be allowed. These prayers relate to the 'bungalow' issue.

(ii) In respect of other monetary claims not related to the 'bungalow' issue, we take the view that it is related to finding of facts. The appellate court must give great deference to the findings and conclusion of the trial judge. (See *Kyros International Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri* [2013] 3 CLJ 813; [2013] 2 MLJ 650; *Watt (or Thomas) v. Thomas* [1947] AC 484; *Clarke v. Edinburg Tramways Co* [1919] SC 35 HL].

(iii) Taking a holistic approach to the plaintiff's monetary claim which we have earlier stated as 'money advanced by the plaintiff after the execution of power of attorney' excluding the bungalow issue, will clearly fall within the domain of the learned Judicial Commissioner related to finding of facts. We are not minded to disturb those findings and decision. However, we do not think it is proper to make the order which says the burial expenses is to be allowed provided the plaintiff produces the receipt. Such an order on the facts will not bring finality

to court proceeding. The law is clear to say that if the plaintiff does not prove his claim, it must be dismissed. There is however, evidence at pp. 278-297 of total expenditure of RM13,261. Those documents were not challenged and the claim consequently should have been allowed. We therefore allow this claim of RM13,261.40.

[38] In consequence, save for the sum of RM13,261.40 which is allowed, the amount (excluding the bungalow claim) granted by the learned Judicial Commissioner is sustained. The order (1) of the High Court which states:

> 1. Tuntutan Plaintif sebanyak RM900,005.00 yang merupakan wang terhutang bagi penjualan Rumah Bungalow ditolak;

is further to be varied to read as follows:

(a) It is hereby declared that the said Soma Sundaram a/l Doraiswamy (deceased) had assigned his interest in the said property held under No. Pendaftaran 3208, Lot 152, Seksyen 6, Bandar Petaling Jaya, Daerah Kuala Lumpur, having a postal address No.11, Jalan 6/6, 46000 Petaling Jaya, Selangor to the plaintiff *vide* a power of attorney dated 2 January 2004 and the plaintiff was entitled absolutely under cl. 21 of the said power of attorney to the said property and/or to all proceeds from the sale of the said property.

(b) It is hereby ordered that the defendant pays the plaintiff the sum of RM900,005 being the balance proceeds received by the said SOMA Sundaram a/l Doraiswamy (deceased) from the sale of the said property.

(c) It is hereby ordered that upon the sale of the said property held under H.S.(M) 8507 PT 1458, Mukim Damansara, Bandar Sunway, Daerah Petaling, Negeri Selangor having a postal address at No. 15, Jalan PJS 914, Bandar Sunway, 46150, Petaling Jaya, the sum of RM900,005 under para. 57(2) above be deducted and paid to the plaintiff.

[39] We make no order as to costs for here and below. Deposit is to be refunded. Both parties are at liberty to seek direction from the High Court (if necessary) for the sale of the terrace house stated above.

We hereby order so.